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16 **UNITED STATES DISTRICT COURT**  
17  
**NORTHERN DISTRICT OF CALIFORNIA**  
18  
**SAN FRANCISCO DIVISION**

20 IN RE: UBER TECHNOLOGIES, INC.,  
PASSENGER SEXUAL ASSAULT  
LITIGATION

22 This Document Relates to:

23 ALL ACTIONS

Case No. 3:23-md-03084-CRB

DEFENDANTS UBER TECHNOLOGIES,  
INC., RASIER, LLC, RASIER-CA, LLC'S  
STATEMENT IN SUPPORT OF  
PLAINTIFFS' ADMINISTRATIVE  
MOTION TO CONSIDER WHETHER  
ANOTHER PARTY'S MATERIALS  
SHOULD BE SEALED [ECF No. 1651]

Judge: Hon. Lisa J. Cisneros  
Courtroom: G – 15th Floor

1                   **DEFENDANTS' STATEMENT IN SUPPORT OF SEALING**

2                   **CONFIDENTIAL MATERIALS**

3                   Pursuant to Civil Local Rules 79-5(f)(3) and (c)(1) and the Protective Order entered in this  
 4 case dated December 28, 2023, ECF 176 (“Protective Order”), Defendants Uber Technologies, Inc.,  
 5 Rasier, LLC, Rasier-CA, LLC (collectively “Uber”), respectfully submit this statement in support of  
 6 Plaintiffs’ Administrative Motion to Consider Whether Another Party’s Material Should Be Filed  
 7 Under Seal, dated September 17, 2024, ECF 1651 (“Plaintiffs’ Motion”).

8                   **I. BACKGROUND AND REQUESTED SEALING**

9                   Plaintiffs’ Motion concerns two documents:

10 <b>Document</b>	11 <b>Description</b>	12 <b>Designating Party</b>
13                  Exhibit A to Reply In Support 14                  of Motion to Compel Custodial 15                  Discovery	16                  Chart previously filed under 17                  seal by Uber containing 18                  confidential information	19                  Uber
20                  Exhibit B to Reply In Support 21                  of Motion to Compel Custodial 22                  Discovery	23                  Chart previously filed under 24                  seal by Uber containing 25                  confidential information	26                  Uber

27                  These documents contain confidential, non-public and proprietary information, including  
 28 Uber’s internal descriptions of employee job duties and reporting responsibilities and information  
 1 from highly confidential documents produced in this litigation that would harm Uber’s competitive  
 2 standing and the privacy interests of its employees if the documents were made public. Uber therefore  
 3 submits this statement requesting that the Court seal the documents under Local Rule 79-5(f)(3).

4                   **II. LEGAL STANDARD**

5                  Documents which do not relate directly to the merits of a case are properly sealed when a  
 6 moving party makes “a particularized showing under the good cause standard of Rule 26(c)”  
 7 *Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1180 (9th Cir. 2006) (internal quotations  
 8 omitted); *Ctr. For Auto Safety v. Chrysler Group, LLC*, 809 F.3d 1092, 1101-02 (9th Cir. 2016).  
 9 Federal Rule of Civil Procedure 26(c) states that good cause may exist when issuing an order to seal  
 10 is necessary to “protect a party or person from annoyance, embarrassment, oppression, or undue  
 11 harassment.” Fed. R. Civ. P. 26(c).

1 burden or expense". Fed. R. Civ. P. 26(c).

2 The documents here are related to a motion to compel custodial discovery, they are not  
 3 produced in relation to a dispositive motion. *See United States v. Selugh*, 896 F. 3d 1007, 1015 (9<sup>th</sup>  
 4 Cir. 2018); *Brown v. Google LLC*, No. 20-cv-03664-YGR (SVK), 2022 WL 4227545, at \*1; *Adtrader,*  
 5 *Inc. v. Google LLC*, No. 17-cv-07082-BLF 2020 WL 6387381 at \*1 (N.D. Cal. Feb. 24, 2020).  
 6 Therefore, the good cause standard applies. Discovery motion materials "are actually one step further  
 7 removed in public concern from the trial process than the discovery materials themselves." *Selugh*,  
 8 896 F. 3d at 1015. District Courts have discretion to balance the interests of private parties and public  
 9 disclosure when deciding to seal documents. *Kamakana*, 447 F.3d at 1180.

### 10 III. UBER'S MATERIAL SHOULD BE KEPT UNDER SEAL

11 Exhibits A and B to Plaintiffs' reply in support of their motion to compel custodial discovery  
 12 (ECF 1652) should be sealed under the good cause standard. The documents at issue contain  
 13 confidential, non-public information, including references to and quotations from highly confidential  
 14 documents produced in this litigation, employee names and confidential, non-public details of their  
 15 internal roles and responsibilities that could cause harm to Uber or its employees if publicly  
 16 disseminated. *See Cummings Decl.* ¶¶ 2-4. Uber has a legitimate interest in sealing the documents in  
 17 order to avoid harm to its competitive standing and the privacy of its employees. There are no less  
 18 restrictive alternatives to sealing these documents.

#### 19 A. Failing to Seal the Documents Would Harm Uber

20 The documents at issue contain confidential, non-public information, including references to  
 21 and quotations from highly confidential documents produced in this litigation, employee names and  
 22 confidential, non-public details of their internal roles and responsibilities that could cause harm to  
 23 Uber or its employees if publicly disseminated. *See Cummings Decl.* ¶¶ 2-4.

24 **Exhibit A to Plaintiffs' Reply in Support of Plaintiffs' Motion to Compel Custodial**  
 25 **Discovery:** This document is a chart originally created by Uber to demonstrate the relevance and  
 26 appropriateness of its proposed custodians. Exhibit A is a revised version of that chart containing  
 27 Plaintiffs' responses to Uber's proposed custodians, created pursuant to the Court's September 13,

1 2024 docket entry (ECF 1368). The chart includes confidential, non-public information supplied by  
 2 Uber. It contains the names of 18 Uber employees, job titles, dates of employment, litigation hold  
 3 dates, and non-public details of their internal roles and responsibilities. A prior iteration of this chart  
 4 (without Plaintiffs' responses) was filed under seal by Uber (ECF No. 1542). Unsealing the documents  
 5 would create a high probability of annoyance, embarrassment and undue burden or expense for the  
 6 employees. Disclosure of Uber's internal descriptions of employee job duties and reporting  
 7 responsibilities is also proprietary information that could cause competitive economic harm to Uber if  
 8 disclosed publicly. *See, e.g.* ECF Nos. 217, 221 (sealing exhibit that contained Uber employee names,  
 9 business titles, and employment dates, among other information).

10       **Exhibit B to Plaintiffs' Reply in Support of Plaintiffs' Motion to Compel Custodial**  
 11 **Discovery:** This document is a chart originally created by Uber to respond to Exhibit 9 of the Luhana  
 12 Declaration In Support Of Plaintiffs' Motion to Compel Custodial Discovery (ECF 1137-1). Plaintiffs  
 13 filed Exhibit 9 filed under seal. The current version of this chart was created by Plaintiffs to add their  
 14 response to Uber's positions, pursuant to the Court's September 13, 2024 docket entry (ECF 1368).  
 15 The chart includes confidential, non-public information supplied by Uber. It contains the names of 18  
 16 Uber employees and non-public details of their internal roles and responsibilities. It also contains  
 17 numerous citations to and quotations from documents produced in this litigation designated as  
 18 "confidential" and "highly confidential – attorneys' eyes only." The information in this chart (without  
 19 Plaintiffs' responses) was filed under seal by Uber (ECF No. 1542). Uber has not agreed to designate  
 20 many of these employees as custodians of ESI, and as such their relevance to the underlying matter is  
 21 in dispute. Unsealing the documents would create a high probability of annoyance, embarrassment  
 22 and undue burden or expense for the employees. Disclosure of Uber's internal descriptions of  
 23 employee job duties and reporting responsibilities is also proprietary information that could cause  
 24 competitive economic harm to Uber if disclosed publicly. *See, e.g.* ECF Nos. 217, 221 (sealing exhibit  
 25 that contained Uber employee names, business titles, and employment dates, among other  
 26 information).

## **B. A Less Restrictive Alternative to Sealing is Insufficient to Prevent Harm**

Exhibits A and B to Plaintiffs' reply in support of their motion to compel custodial discovery contain information that Uber's statement is intended to protect from publication. No less restrictive alternative to sealing the exhibits to the documents at issue is sufficient. *See* Cummings Decl. ¶¶ 2-4. Actions short of sealing the documents would not protect the privacy interests of Uber or its employees. Alternatively, if the Court were to disagree with Uber and determine that employee names, job titles, and dates of employment should not be sealed, the Court should order that columns "D" and "E" ("Relevance" and "Plaintiffs' Response") of Exhibit A should be redacted in full, and columns "D" and "E" ("Analysis" and "Plaintiffs' Response") of Exhibit B should be redacted in full in order to prevent the disclosure of confidential internal descriptions of employee job duties and reporting responsibilities, as well as descriptions of and quotations from confidential documents.

## IV. CONCLUSION

For the foregoing reasons, Uber respectfully requests that the Court order that Exhibits A and B to Plaintiffs' reply in support of their motion to compel custodial discovery be maintained under seal.

DATED: September 24, 2024

Respectfully submitted,

SHOOK HARDY & BACON L.L.P.

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